

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: October 26, 2010
Date of Order: 2nd November, 2010

+ Crl.M.C.No. 2042/2010

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02.11.2010

M.S.Yadav

... Petitioner

Through: Mr. D.C.Yadav, Ms. Ruchi Munjal &
Mr. Vivek Yadav, Advocates

Versus

Om Prakash & Ors.

... Respondents

Through: Mr. Sunil Sharma, APP for the State
Mr. Davinder Hora & Mr. Sikander Khan, Advs.
for R-1 & R-3

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

This petition has been preferred against an order dated 30th November, 2009 passed by the learned ASJ Rohini whereby he allowed the revision filed by respondents against the order dated 7th June, 2007 of learned Metropolitan Magistrate and set aside the order of learned MM summoning the respondents.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner moved an application under Section 340 Cr.P.C. on 26th November, 1998 alleging that the photocopy of the compromise filed in complaint case No. 82/1 by the police was a forged document and he had not entered into any such compromise with the opposite side and action should

be taken against the IO/SHO and the accused persons for forging the photocopy of the compromise. No action was taken on this application under Section 340 Cr.P.C.. He thereafter filed a complaint case making respondent and others as accused, for registration of FIR against them under Section 465/468/471 read with Section 120-B IPC alleging that the compromise placed on the record was a forged document. On this complaint of the petitioner, the learned MM summoned the respondents under Section 465/468/471 IPC and under Section 166/167 read with Section 120-B IPC vide his order dated 7th June, 2007.

3. The learned ASJ before whom the revision was filed observed that the only evidence led by the petitioner in this case against the respondents was his own statement and in his statement regarding offence alleged in the complaint he stated that the photocopy of the compromise did not bear his signature and it was concocted and fabricated by respondents and by Om Prakash (SHO) in collusion with other accused persons. The original of this was not produced in the Court by the IO despite directions given by the MM nor did the SHO produce this original document. The learned ASJ observed that the SI Rohit, who was the IO of the case, had already died. Mark 'A' which was filed in the Court was only a photocopy; the original of the same was not traceable. This original was not in custody of the respondents neither there was any evidence that this document Mark 'A' was in the handwriting of respondent Om Prakash. Om Prakash was not even a witness to Mark 'A'. Mark 'A' bore signatures of B.L.Madan and Mukesh, and SI Rohit (deceased) had attested the same. The learned ASJ observed that a person is said to have forged a document if he made false document with

intent to damage or cause injury to the public or to any other person. In the present case there was no evidence that any part of this document Mark 'A' was even prepared by the respondents. He therefore observed that there was not sufficient evidence before the learned MM to summon the accused persons under Section 468 read with Section 120-B IPC which required that a document must be made with intent to cheat or to fraudulently induce the victim to deliver some property. Since there was no evidence that this document was forged by any one of the respondents or it was in the knowledge of the respondents that it was a forged document, offence under Section 471 IPC was not made out, he therefore allowed the revision and set aside the summoning order.

4. Under Section 482 Cr.P.C. the High Court can intervene only if the order passed by the Court below is patently illegal or beyond jurisdiction. Section 482 Cr.P.C. is not in the nature of second appeal or second revision and the jurisdiction under Section 482 Cr.P.C. should be exercised only in those rare cases where gross injustice has been done to the petitioner or a patent illegality is reflected from the order of the Court below. It is undisputed fact that the Investigating Officer who was assigned the complaint of the petitioner for investigation, reported it to the SHO that the parties had compromised. All reports in the Court are forwarded through SHO, though they are prepared and signed by the IOs. SHO is technically responsible to the Court and he has to forward the reports of the Investigating Officers. But that does not mean that every document which is sent by the IO to the SHO, if forwarded by the SHO, results into a criminal conspiracy between the IO and SHO. It is quite possible that SHO believed the IO and forwarded the report

to the Court hoping that what IO had written was correct. Moreover, the alleged compromise on the basis of which the learned MM summoned the respondents is not available on record. If the original is not available on record and cannot be produced and a report has already been received that the record has been destroyed, there is no possibility of the original coming on record or the offence being proved.

5. I consider that under these circumstances it would not be appropriate for this Court to interfere with the order of learned ASJ. The petition has no force and is hereby dismissed.

November 02, 2010
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SHIV NARAYAN DHINGRA, J.